

Motion is denied as moot in light of my Order granting an extension of time to take depositions. *See* ECF No. 116.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SO ORDERED.

INTL FCSTONE MARKETS LLC,
Plaintiff,

/s/ Alvin Hellerstein
July 5, 2023

Case No. 18-CV-1004-DAB

v.

INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.,
Defendant.

DEFENDANT'S MOTION TO COMPEL DEPOSITIONS

Defendant INTERCAMBIO MEXICANO de COMERCIO S.A. de C.V. moves pursuant to Fed.R.Civ.P. 37(a)(1) to compel plaintiff and its officers and representative to appear for depositions pursuant to Notice of Depositions duly and timely served..

Dated: June 30, 2023

LAW OFFICE OF DENNIS GROSSMAN
Attorney for Defendant
INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.

/s/ Dennis Grossman
by: _____
Dennis Grossman
10 Bond Street (#600)
Great Neck, New York 11021
(516) 466-6690
dagrossmanlaw@aol.com

Of Counsel to:
FISCHER & BURSTEIN, P.C.
Attorneys for Defendant
INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.
98 Cutter Mill Road (Suite 294N)
Great Neck, New York 11021
(516) 829-1900

CERTIFICATE OF SERVICE

I certify that on this June 30, 2023 I served copies of the foregoing document by ECF on the attorneys for plaintiff by filing this document with this Court which then served the attorneys for plaintiff through this Court ECF's system.

/s/ Dennis Grossman

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTL FCSTONE MARKETS LLC,
Plaintiff,

Case No. 18-CV-1004-DAB

v.

INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.,
Defendant.

**DECLARATION OF DEFENDANT'S COUNSEL IN SUPPORT OF DEFENDANT'S
MOTION TO COMPEL DEPOSITIONS**

Dennis Grossman declares under penalties of perjury that:

1. I am the attorney for Defendant INTERCAMBIO MEXICANO de COMERCIO S.A. and am of counsel to Fischer & Burstein, P.C.
2. I make this declaration in support of Defendant's motion to compel depositions pursuant to the attached Notice of Depositions duly and timely served.
3. The depositions could not proceed as noticed because of a surgery in the family of plaintiff's counsel – I consented to the postponement as a courtesy – but Defendant is compelled to make this motion to preserve its right to the depositions.
4. I have conferred with plaintiff's counsel in connection with this request which resulted in our joint motion yesterday for an extension of time to take the depositions, failing which this motion is necessary.

Declarant respectfully submits that the joint request yesterday for an extension of time should be granted, failing which this motion should be granted.

Dated: June 30, 2023

LAW OFFICE OF DENNIS GROSSMAN
Attorney for Defendant
INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.

/s/ Dennis Grossman
by: _____
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/s/ Dennis Grossman

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTL FCSTONE MARKETS LLC,
Plaintiff,

Case No.18-CV-1004-AKH

v.

INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.,
Defendant.

DEFENDANT'S NOTICE TO TAKE DEPOSITIONS

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Defendant INTERCAMBIO MEXICANO de COMERCIO S.A. de C.V. will take the following depositions upon oral examination – before a reporter duly qualified to take testimony and not disqualified under the Federal Rules of Civil Procedure, at the offices of defendant's counsel Fischer & Burstein P.C., located at 80-02 Kew Gardens Road, 9th floor, Kew Gardens (Queens), New York 11415:

1. on June 29, 2023 beginning at 10:00 AM EDT, the deposition of plaintiff INTL FCSTONE MARKETS LLC by one or more officers, managing agents, directors or other persons designated by plaintiff pursuant to Federal Rule of Civil Procedure 30(b)(6) to testify on behalf of plaintiff concerning the following matters: the trades and transactions on the account of defendant maintained at plaintiff; plaintiff's Responses dated June 22, 2022 to defendant's Superseding Interrogatories #1 & #2; the confirmations issued by plaintiff to defendant purporting to confirm transactions and/or stop loss orders on defendant's account; communications between plaintiff and defendant; plaintiff's decision to issue to defendant the Notice of Failure to Pay attached to the Second Amended Complaint as exhibit F (ECF 68-6) and the

- calculation of the amount allegedly due pursuant to such Notice of Failure to Pay; and plaintiff's decisions to demand variation margin on the account of defendant; and
2. on June 30, 2023 at 10:00 AM EDT, the deposition of plaintiff's officer, managing agent and/or director Albert Scalla;
 3. on June 30, 2023 at 1:00 PM EDT, the deposition of plaintiff's officer, managing agent and/or director Jason Estrada;
 4. on June 30, 2023 at 3:00 PM EDT, the deposition of plaintiff's officer, managing agent and/or director Scott Thein.

The depositions will be stenographically transcribed by a reporter who is not disqualified under the Federal Rules of Civil Procedure.

The deponents are required to bring with them to the above-mentioned depositions, and to permit defendant to copy and use as exhibits at the depositions, the following documents:

- a. all documents which plaintiff contends are confirmations of orders for the purchase, sale or placement on defendant's account of securities, stocks, options, futures positions or contracts, stop loss orders, or any other transactions on defendant's account; and
- b. all documents which show the market price for the positions in defendant's account which triggered the sale(s) of such position(s) pursuant to each and every stop loss order placed on defendant's account; and
- c. all documents which show the sale(s) in defendant's account pursuant to each and every stop loss order placed on defendant's account; and
- d. all documents which plaintiff contends justify each and every stop loss order placed on defendant's account; and

- e. all documents which plaintiff contends justify the sale(s) in defendant's account pursuant to each and every stop loss order placed on defendant's account.

DEFINITIONS AND INSTRUCTIONS

- (1) The definitions and instructions in S.D.N.Y. Local Civil Rule 26.3 apply.
- (2) The terms "and", "or", "and/or", "any", "all", "any and all", "each", "every", "each and every", "such", "either", "both", "either or both", "either/or", "one or more", "one or both", "two or more", "(s)", "(es)", "(ies)", "(d)" and "(ed)" shall be construed conjunctively or disjunctively to make their meanings inclusive rather than exclusive.
- (3) "Account" or "defendant's account" means the account of defendant Intercambio Mexicano de Comercio S.A. de C.V. maintained or held at plaintiff.
- (4) "Between" means between or among.
- (5) "Defendant" means Intercambio Mexicano de Comercio S.A. de C.V. and includes all person(s) employed by, acting for and/or acting on behalf of Intercambio Mexicano de Comercio S.A. de C.V., regardless of whether such person(s) ceased to be employed by, acting for and/or acting on behalf of Intercambio Mexicano de Comercio S.A. de C.V. after the events to which these interrogatories pertain, and regardless of whether such events occurred before or after the commencement of this action.
- (6) "Document" means the full expanse of recorded information within the scope of Fed.R.Civ.P. 34 and includes all forms of recorded or stored information, on hard copy, electronic, digital and/or magnetic media, including without limitation paper, other hard surface, tape recording, magnetic recording, email, computer disc, computer chip, computer drive, flash drive, optical disc, electronically stored information, or otherwise.

(7) "Plaintiff" means Intl FCStone Markets LLC and includes all person(s) employed by, acting for and/or acting on behalf of Intl FCStone Markets LLC, regardless of whether such person(s) ceased to be employed by, acting for and/or acting on behalf of Intl FCStone Markets LLC after the events to which these interrogatories pertain, and regardless of whether such events occurred before or after the commencement of this action.

(8) "Second Amended Complaint" means the Second Amended Complaint (ECF 68) filed by plaintiff in this action.

(9) "This action" means this present action, case no. 18-CV-1004 in the United States District Court for the Southern District of New York.

(10) "Variation margin" has the same definition ascribed to it in the Second Amended Complaint in this action (ECF 68) and in the "Terms of Business" attached as Exhibit A to the Second Amended Complaint in this action (ECF 68-1).

Dated: June 15, 2023

LAW OFFICE OF DENNIS GROSSMAN
Attorney for Defendant
INTERCAMBIO MEXICANO
de COMERCIO S.A. de C.V.

/s/ Dennis Grossman
by: _____
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CERTIFICATE OF EMAIL AND U.S. MAIL SERVICE

I certify that on this June 15, 2023 I served copies of the foregoing document by:

1. email addressed to plaintiff's attorneys at their email addresses as follows: Steven Mellen, Esq., mellen.s@wssllp.com, and by:
2. postage prepaid U.S. mail addressed to plaintiff's attorneys as follows:

Steven Mellen, Esq.
Winget, Spadafora & Schwartzberg LLP
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